

FEDERAL ELECTION COMMISSION

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Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 4610

DATE ACTIVATED: 1/9/97

STAFF MEMBERS: Susan Kay
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SOURCE: INTERNALLY GENERATED

RESPONDENTS: Dan Hamburg for Congress Committee
and Ted Loring, as Treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(13)
2 U.S.C. § 432(c)(5)
2 U.S.C. § 434(b)(3)
2 U.S.C. § 434(b)(5)(A)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(2)(A)
11 C.F.R. § 102.9(b)(1)
11 C.F.R. § 102.9(b)(2)
11 C.F.R. § 104.3(b)(3)
11 C.F.R. § 104.3(b)(3)(i)(A)
11 C.F.R. § 104.3(b)(3)(i)(B)
11 C.F.R. § 104.3(b)(4)(i)(A)
11 C.F.R. § 104.7(a)
11 C.F.R. § 104.7(b)
11 C.F.R. § 110.1(k)(3)
11 C.F.R. § 110.1(b)(5)
11 C.F.R. § 110.1(b)(5)(ii)(B)

INTERNAL REPORTS CHECKED: Referral Materials

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by an audit of the Dan Hamburg for Congress Committee ("the Committee") and Ted Loring, as Treasurer, undertaken in accordance with 2 U.S.C. § 438(b).

The Audit Division's referrals of matters from the audit are attached. Attachment 1. According to the referral, the Committee received apparent excessive contributions from individuals totaling \$5,985 and apparent excessive contributions from political action committees ("PACs") totaling \$3,700, failed to properly disclose contributor and disbursement information, and failed to maintain proper documentation for disbursements.

II. FACTUAL AND LEGAL ANALYSIS

A. APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits an individual from making contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000, and provides that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000. 2 U.S.C. §§ 441a(a)(1)(A) and (a)(2)(A).

Political committees must file reports disclosing the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution. 2 U.S.C. § 434(b)(3). Each report shall disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution. *Id.*

Section 104.7(a) and (b) of Title 11 of the Code of Federal Regulations states, in part, that if best efforts have been used to obtain, maintain and submit the information required by the Act

for the political committee, any report of such committee shall be considered in compliance with the Act. With regard to reporting the identification of each person whose contribution(s) to the political committee and its affiliated committees aggregate in excess of \$200 in a calendar year, the treasurer and the committee will only be deemed to have exercised best efforts if all of the following are present: all written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer; the treasurer makes at least one effort, in either a written request or a documented oral request, within thirty days of the receipt of the contribution, to obtain the information; and the treasurer reports all contributor information not provided by the contributor, but in the committee's possession, including information in contributor records, fundraising records and previously filed reports, in the same two year election cycle.¹

Section 434(b)(5)(A) of Title 2 of the United States Code provides that political committees shall disclose the name and address of each person to whom an expenditure in aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure. Section 104.3(b)(3)(i)(A) of Title 11 of the Code of Federal Regulations states that purpose means a brief statement or description of why the disbursement was made.²

¹ The effective date of this regulation was March 3, 1994. Some of the contributions at issue in this matter were received before the effective date of the regulations. However, the Audit Division is unable to give a dollar amount for the contributions received before the effect date and after because testing of the contributions was done on a sample basis.

² Examples of statements or descriptions which meet the requirements include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. 11 C.F.R. § 104.3(b)(3)(i)(B). However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and

Section 432(c)(5) of Title 2 of the United States Code requires the treasurer of a political committee to keep an account of the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or canceled check for each disbursement in excess of \$200.

B. DISCUSSION

1. Excessive Contributions

The Audit staff reviewed contributions made to Dan Hamburg for Congress and identified apparent excessive contributions from individuals totaling \$5,985 and apparent excessive contributions from other political committees totaling \$3,700. The Audit staff did not find any indication that the Committee attempted to contact contributors for the purpose of obtaining reattributions or redesignations of the contributions pursuant to 11 C.F.R. 110.1(k)(3) or 110.1(b)(5).³ The Committee claims that its contributions were aggregated by reviewing previous disclosure report entries and by using a computerized database.⁴ The Committee argues that it contacted contributors about any excessive contributions to obtain a redesignation or reattribution or, if necessary, make a refund of the excessive portion.⁵

According to the Audit Division, individuals made contributions to the Committee from both their personal accounts and business accounts; the contributions were not aggregated correctly. Apparently, the contributions from the individuals' business accounts were either

voter registration would not meet the requirements of 11 C.F.R. § 104.3(b)(3) for reporting the purpose of an expenditure. 11 C.F.R. §§ 104.3(b)(3)(i)(A) and (B).

³ It should be noted that the regulatory period in which the Committee may seek and obtain proper reattributions or redesignations has expired. 11 C.F.R. § 110.1(b)(5)(ii)(B).

⁴ The Audit Division notes that the Committee's database was incomplete and, as a result, the Audit staff was unable to use it for testing purposes.

recorded in the Committee's database under the business name or were omitted from the database altogether. In order to determine who made the contribution from the two different sources, the Audit staff considered contributions to be made by the individual who signed the contributor check unless documentation to the contrary was made available for review. In addition, the Audit staff found instances where contributions were attributed to individuals and/or spouses without the required signatures.

With respect to the excessive contributions from political committees, it appears that the Committee aggregated, for limitation purposes, certain contributions on a calendar year basis, as opposed to, on a per election basis. According to the disclosure reports of the contributing committee, the contributions at issue were designated by the political committees as contributions to the general election. However, the Committee attributed the contributions to the primary election. As a result of this attribution, the Committee received excessive contributions from the political committees.⁶

The Committee's actions resulted in it receiving excessive contributions from individuals and political committees.⁷ Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Dan Hamburg for Congress Committee and Ted Loring, as treasurer, violated 2 U.S.C. § 441a(f).

⁵ The Audit referral notes that none of the reported refunds were for the apparent excessive contributions the Audit staff identified.

⁶ The Audit Division's review of this issue was not done as a 100% review, but done rather on a sample basis. The excessive contributions from individuals totaling \$5,985.00 involve excessive contributions as low as \$200 and only as high as \$1,000; the excessive contributions from political committees totaling \$3,700.00 involve excessive contributions as low as \$200 and only as high as \$2,500.

⁷

In this circumstance, no individual's excessive portion of the contributions exceeded \$1,000 and no political committees' excessive portion of the contributions exceeded \$2,500, therefore the Office of General Counsel does not have any recommendation with respect to the individuals. The Office of General Counsel believes that a similar approach should be taken with respect to the political committees in this case.

2. Disclosure of Contribution Information

The Audit staff's review of contributions received from individuals revealed errors regarding the disclosure of contributor names, contribution dates, aggregate year-to-date totals, contributor addresses and earmarked contributions.⁸ The Audit referral notes the Committee was unable to demonstrate that it had exercised best efforts to obtain, maintain and submit the required occupation and name of employer information. The Committee did not provide any evidence of a second written or oral request to obtain the missing information as required by 11 C.F.R. § 104.7.

The Audit staff also revealed a number of errors involving contributions from other political action committees involving disclosure of contributor addresses and aggregate year-to-date totals. The total amount of political action committee contributions in error in the Audit staff's review is \$189,055. Remedial steps were taken by the Committee and the remaining amount in error is \$182,555. Included in the Audit staff's review was a \$500 receipt from an unregistered political committee, Napa County Democratic Caucus (NCDC). The Committee reported this contribution as an offset to operating expenditures. The Committee disclosed the contribution as a "Rental Deposit Refund" in its 1993 Mid-Year report. However, based on information made available during Audit Division fieldwork, it appears that the \$500 received from the NCDC was a contribution and not a "Rental Deposit Refund" as disclosed by the Committee.

The Committee also reported receiving two \$500 checks from Ukiah Valley Democratic Club as "Offsets to Operating Expenditures." These receipts were disclosed as a "Refund" and

⁸ It should be noted that the Committee did provide a few solicitation devices to the Audit staff, some of which contained a request for the contributor's occupation and name of employer, while others did not.

"Refund of Rent." The Audit referral noted that the disclosure of these transactions as offsets, rather than contributions, was questionable. The auditors did not find evidence of any original payment and concluded that these were contributions.

In light of the Committee's failure to disclose the contribution information, the Office of General Counsel recommends that the Commission find reason to believe that Dan Hamburg for Congress Committee and Ted Loring, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) and (B).

3. Disclosure of Disbursement Information

The Audit Division's testing of disbursements itemized on Schedules B of the Committee's reports revealed a material error rate for the required disclosure information. The errors involved inadequate purposes, incomplete or omitted addresses and combining two separate disbursements into a single itemized entry.⁹

The Committee responded to these discrepancies by filing amended Schedules B which corrected several errors noted above. However, the error rate relative to the Committee's overall disclosure of disbursement information is still material. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Dan Hamburg for Congress Committee and Ted Loring, as treasurer, violated 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i)(A).

4. Documentation for Disbursements

The Audit staff's review of the Committee's documentation for disbursements revealed that the Committee did not satisfy the minimum recordkeeping requirements for a material number of its disbursements. The Committee did maintain canceled checks for most of its

⁹ The Committee did not maintain documentation from its vendors (i.e.: invoices and/or receipted bills) that detailed the addresses and/or the purposes disclosed on its Schedules B for a material number of its disbursements.

disbursements, however, the checks did not detail the purpose of the disbursement and/or contain the payee's address. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Dan Hamburg for Congress and Ted Loring, as treasurer, violated 2 U.S.C. § 432(c)(5).

III. CONCLUSION

The Office of General Counsel recommends that the Commission take no further action for most of the apparent violations. These findings involve relatively low dollar amounts and the statute of limitations has expired or will expire for most of the contributions.¹⁰ In order to narrow the scope of this case and to be consistent with the proper ordering of the Commission's resources and priorities, the Office of General Counsel recommends that the Commission enter into pre-probable cause conciliation with the Committee only for violations related to political action committee disclosure of contribution errors. Although the statute of limitations has expired for a portion of these violations, this Office believes that even after excluding the errors outside the statute of limitations, the amount in error, \$95,900, remains significant.¹¹ Attached for the Commission's approval is the proposed conciliation agreement.¹²

¹⁰

The statute of limitations expired for violations relating to excessive political action committee contributions and has already expired for most of the violations related to the excessive individual contributions. The statute of limitations for the most recent violations related to excessive individual contributions expires on October 20, 1999. The Committee took some remedial action by filing amended Schedules D which disclosed all apparent excessive contributions from individuals and political committees. The excessive portion of the contributions are reflected as debts owed by the Committee. The Committee also filed amended Schedules A which corrected the disclosure of several of the contributions from individuals and political committees. In addition, violations related to disclosure of disbursement information and documentation of disbursements were evaluated on a sample basis and therefore the total amount in error could not be calculated.

¹¹ The amount in error, according to the Audit staff's review, was \$189,055 and once remedial action was taken by the Committee, the amount in error was reduced to \$182,555.

¹² The statute of limitations expires on December 31, 1999 for the most recent report containing errors.

IV. RECOMMENDATIONS

1. Find reason to believe Dan Hamburg for Congress and Ted Loring, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A), 432(c)(5), 434(b)(5)(A), 441a(f), but take no further action.
2. Find reason to believe Dan Hamburg for Congress and Ted Loring, as treasurer, violated 11 C.F.R. § 104.3(b)(3)(i)(A), but take no further action.
3. Find reason to believe Dan Hamburg for Congress and Ted Loring, as treasurer, violated 2 U.S.C. § 434(b)(3)(B).
4. Enter into conciliation with Dan Hamburg for Congress and Ted Loring, as treasurer, prior to a finding of probable cause.
5. Approve the attached Conciliation Agreement.
6. Approve the attached Factual and Legal Analysis.
7. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

7/7/99
Date

BY:

Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

Attachments:

1. Audit Referral
 2. Proposed Conciliation Agreement for Dan Hamburg for Congress Committee and Ted Loring, as treasurer
 3. Factual and Legal Analysis
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